

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 465 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

=====

1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

KIRAN @ MASANIYA S/O. CHAN CHHARA

Versus

DISTRICT MAGISTRATE

Appearance:

MR. V.H. Patel for Mr. RC KODEKAR, Advocate for Petitioner
Mr. K.T. Dave, A.G.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 22/09/1999

ORAL JUDGEMENT

Heard the learned Advocate Mr.V.H. Patel for Mr.
R.C. Kodekar, Advocate, on behalf of the the petitioner
and learned A.G.P. Mr. K.T. Dave for the respondents
nos.1,2 and 3.

By this petition under Articel 226 of the
Constitution of India, the petitioner has challenged the

detention order dated 1-12-1998 passed by the respondent no.1-District Magistrate, Banaskantha, against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Antisocial Activities Act, 1985("PASA" for short).

The petitioner has produced the impugned order and committal order vide Annexures "A" & "B" respectively while the grounds of detention supplied to the petitioner under Section 9(1) of "PASA" is produced vide Annexure "C".

Perusal of the grounds of detention indicate that four criminal cases for the offences made punishable under Sec.379 of the Indian Penal Code were registered at Panlanpur City on 11-7-1997, 24-8-1997, 12-10-1997 and 29-12-1997. Furthermore, the fifth case against the petitioner was registered at Bhildi Police Station for the offences made punishable under Sec.379 read with Sec.114 of IPC on 25-3-1998 and the sixth case was registered at Deesa City for the offences made punishable under Sec.379 read with Sec.114 of IPC on 30-5-1998.

The grounds of detention further indicate that the detaining authority having construed the material of above stated six cases which are pending for investigation has come to the conclusion that the petitioner is a " dangerous person " within the meaning of Section 2(c) of "PASA". That his antisocial activity could not be prevented by resorting to enforcement of general law, and as such, it is necessary to detain the petitioner by exercising power under Section 3(1) of "PASA". Hence, the impugned order is passed on 1-12-1998.

Learned Advocate Mr. V.H. Patel has assailed the order of detention on numerous grounds. It has been contended on behalf of the petitioner that the last offence registered against the petitioner as stated in the grounds of detention appears to be of 30-5-1998. That thereafter, there is no material stated in the grounds of detention to infer the fact that live link of criminal activity or antisocial activity alleged against the petitioner has continued till 1st December, 1998 when impugned order is passed by taking action under "PASA". That such link having been snapped on account of inordinate delay on the part of the detaining authority, the detention order has been vitiated and is bad in law.

It may be noted that despite service of rule, no affidavit has been filed on behalf of either of the respondents. Learned A.G.P. Mr. Dave made an abortive

attempt to salvage the issue by contending that the petitioner was arrested in different cases registered against him between August, 1998 and 10th September, 1998 when he was released on bail, and thereby, inordinate delay cannot be said to have occurred. It is difficult to agree with the submission urged on behalf of the respondent. Delay has to be explained on the basis of material so as to show that live link of criminal activity alleged against the petitioner has continued till the date on which impugned action is taken. In the instant case, even if the facts stated by learned A.G.P. from the file that the petitioner was in judicial custody till 10th September, 1998 is taken at its face value, it does not explain subsequent period till 1st December, 1998 when the impugned order is passed.

Under the circumstances, I am constrained to hold that the impugned order suffers from the infirmity of having been passed after inordinate delay which has not been explained. Consequently, the impugned order being bad in law cannot be sustained and the petition deserves to be allowed.

In the light of the aforesaid discussions, the petition is allowed. The impugned order of detention dated 1st December, 1998 passed by the respondent no.1-District Magistrate, Banaskantha is hereby quashed and set aside. The petitioner-detenu- Kiran alias Masaniya Chau Chara is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

stanley-akt.